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SECOND-PARENT ADOPTIONS: ARE THEY ENTITLED TO FULL FAITH AND CREDIT?

Lisa S. Chen*

I. INTRODUCTION

Anne Magro and Heather Finstuen have lived happily together for over twelve years and are the proud parents of two six-year-old twin girls.¹ They bring snacks to soccer games, cheer on their daughters at T-ball games, and carpool with other parents to gymnastics practice.² Aside from living in an openly lesbian relationship while raising their daughters, the Magro-Finstuen household is typical of most families in the United States.³ However, the security of knowing that both women have legal status as parents is threatened by a new Oklahoma statute that refuses to recognize adoptions issued by other states to same-sex couples.⁴

In the past decade, the number of families with same-sex parents in the United States has increased dramatically.⁵ Many state courts and legislatures have responded by creating second-parent adoptions, which allow the non-biological parent in such relationships to adopt the child without sever-

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1. Second Amended Complaint at ¶ 13, *Finstuen v. Edmondson* (W.D. Okla. Aug. 4, 2005) (No. CIV-04-1152C).

2. See T. Shawn Taylor, *Ties that Unwind; Legal Cases and Some State Laws Threaten to Undo Lesbian Couples' Adoptions, Parental Arrangements*, CHI. TRIB., Nov. 17, 2004, at 1.

3. See *id.*

4. OKLA. STAT. ANN. tit. 10, § 7502-1.4 (West Supp. 2004). The statute states "[t]his state, or any of its agencies, or any court of this state shall not recognize an adoption by more than one individual of the same sex from any other state or foreign jurisdiction." *Id.*

5. See Taylor, *supra* note 2. According to 2000 U.S. Census data, 34% of all lesbian couples and 22% of all gay male couples are raising children under the age of 18. This is an increase from 1990, when only 19.5% of all lesbian couples and 5% of male couples were raising children under 18. See *id.*

ing the biological parent's rights.⁶ In the Magro-Finstuen household, Anne conceived the twins through artificial insemination⁷ and Heather obtained a valid second-parent adoption after the twins were born.⁸ The new Oklahoma statute threatens to nullify Heather's valid adoption issued by the State of New Jersey.

The State of Michigan has followed Oklahoma's lead. Michigan Attorney General Mike Cox announced in September 2004 that "gay adoption is against state law and that, as a matter of policy, Michigan will not recognize adoptions performed in other states."⁹

The Oklahoma statute refusing to recognize same-sex adoptions raises issues that intersect both constitutional and family law. Unlike marriages, which are granted by state legislatures,¹⁰ adoptions are granted by a court of competent jurisdiction.¹¹ The United States Constitution's Full Faith and Credit Clause requires state court judgments to be given the same effect in every other state.¹² Therefore, the Oklahoma statute may run contrary to the Constitution by refusing to recognize valid adoption decrees issued by other states to same-sex couples.

To challenge the Oklahoma statute, Magro and Finstuen,

6. See discussion *infra* Part II.A.2.

7. See Taylor, *supra* note 2.

8. See *id.* Heather's legal status as a parent enables her to sign permission slips for school-related events, consent to medical treatment, and include the twins in her medical benefits package. See Jane S. Schacter, *Constructing Families in a Democracy: Courts, Legislatures and Second-Parent Adoption*, 75 CHI.-KENT L. REV. 933, 936 (2000). Heather would now also have standing to ask for visitation or custody of the girls in the event of separation. See *id.* Further, the children now have the right to inherit from Heather and to receive any life insurance benefits she may carry. See *id.*

9. Staff Editorial, *Gay Adoption Decision Unmerited*, MICH. DAILY, Sept. 21, 2004.

10. See generally Ralph U. Whitten, *The Original Understanding of the Full Faith and Credit Clause and the Defense of Marriage Act*, 32 CREIGHTON L. REV. 255 (1998) [hereinafter Whitten, *Original Understanding*] (examining the relevance of the Full Faith and Credit Clause and its impact on the Federal Defense of Marriage Act).

11. See Ralph U. Whitten, *Choice of Law, Jurisdiction, and Judgment Issues in Interstate Adoption Cases*, 31 CAP. U. L. REV. 803, 804 (2003) [hereinafter Whitten, *Choice of Law*].

12. The Full Faith and Credit Clause of the Constitution states that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. CONST. art. IV, § 1.

and several gay families,¹³ filed a lawsuit in Oklahoma federal court seeking declaratory and injunctive relief.¹⁴ The parties did not request changes to Oklahoma's adoption laws or public policies regarding gay rights, but merely asked for assurances that the state would allow them to retain the legal protection granted to them by their final adoption orders from other states.¹⁵

This comment will explore the various constitutional issues surrounding the Oklahoma statute. Part II of this comment will provide background information on adoption law and on the creation of second-parent adoptions for families with same-sex parents.¹⁶ Part II will also discuss the history of the Full Faith and Credit Clause and its application by modern courts, especially in relation to valid divorce decrees issued by other states.¹⁷ Part III will specifically address the problems posed by the passage of the Oklahoma statute.¹⁸ Using the cases discussed in Part II, Part IV will analyze the constitutionality of the Oklahoma statute in light of past court decisions.¹⁹ Finally, Part V will propose that federal courts strike down the Oklahoma statute as unconstitutional because it violates the Full Faith and Credit Clause of the Constitution.²⁰

II. BACKGROUND

A. Adoption Law

1. Introduction to American Adoption Law

Although this comment focuses largely on the implications of the Full Faith and Credit Clause, a rudimentary un-

13. See discussion *infra* Part II.C.

14. Complaint, *Finstuen v. Edmondson*, 2004 WL 3139176 (W.D. Okla. Sept. 15, 2004) (No. 04-CV1152).

15. Second Amended Complaint, *supra* note 1, at ¶ 9 ("If something happened to Anne, would I (a) be able to make medical or school decisions for the girls, and (b) could I retain custody of them? If my adoption is not recognized, then the children could become wards of the state and their custody could be up for grabs."). See Taylor, *supra* note 2.

16. See discussion *infra* Part II.A.

17. See discussion *infra* Part II.B.

18. See discussion *infra* Part III.

19. See discussion *infra* Part IV.

20. See discussion *infra* Part V.

derstanding of adoption law is necessary to put the topic in context. Adoption is traditionally perceived as a positive occurrence in society.²¹ It allows children who do not have parents to find new homes and parents.²² An adoption also creates a legal bond between the non-biological parent and the child, replacing the biological parents' previous rights and responsibilities toward the child.²³

Adoption is a statutorily-created right, similar to that of marriage and divorce.²⁴ Each state legislature has the right to create its own requirements and policies with regard to adoption.²⁵ Therefore, there are variations in adoption requirements among the states.²⁶ However, most state adoption statutes share similar elements, such as the consent of certain parties,²⁷ a home study of the prospective adoptive parents,²⁸ and a judicial determination that the adoption is in the best interests of the child.²⁹

Most adoption laws also contain a "cut-off" provision that requires either the surrender of the child's legal rights and

21. See generally David Ray Papke, *Pondering Past Purposes: A Critical History of American Adoption Law*, 102 W. VA. L. REV. 459, 459 (2000). Professor Papke critically reviews the history of American adoption law, theorizing that changes in adoption laws were meant to favor the upper and middle classes. See *id.*

22. See *id.*

23. See, e.g., CAL. FAM. CODE § 8616 (Deering 2004); see also Schacter, *supra* note 8, at 936-37.

24. See, e.g., CAL. FAM. CODE §§ 300, 2300 (Deering 2004).

25. See Schacter, *supra* note 8, at 936 n.13.

26. See *id.* at 936. The choice-of-law to be applied during an adoption proceeding is usually the law of the forum. LUTHER L. MCDUGAL III ET AL., AMERICAN CONFLICTS LAW § 223, at 781 (5th ed. 2001). However, the "incidents" of adoption, such as the parent's right to discipline the child and the child's inheritance rights, are governed by the law of the state in which the parent and child are living when the issue arises, even though the adoption may have taken place in another state. See Whitten, *Choice of Law*, *supra* note 11, at 807.

27. In California, consent of the biological parents is required by statute. CAL. FAM. CODE § 8604 (Deering 2004). For children over the age of twelve, their consent to the adoption is also required by California statute. *Id.* § 8602. New York requires the consent of the adoptive child if over fourteen years of age, the consent of the parents or surviving parent, and the consent of either the mother or the father if the child was born out of wedlock. N.Y. DOM. REL. LAW § 111 (McKinney 2004).

28. See Schacter, *supra* note 8, at 936.

29. See *id.* at 936; see also, e.g., CAL. FAM. CODE § 8612(c) (Deering 2004) (stating that "[i]f satisfied that the interest of the child will be promoted by this adoption, the court may make and enter an order of adoption of the child by the prospective adoptive parent or parents").

responsibilities by the birth parent(s), or the court-ordered termination of such legal rights.³⁰ Once either has occurred, the adoptive parents may then acquire all the legal rights and responsibilities that were relinquished by the biological parent(s).³¹

The requirement of a “cut-off” provision is problematic when one of the biological parents wishes to retain legal custody over the child. Such is the case when one parent desires to remarry, or marry for the first time, and the new spouse³² wishes to adopt the child. Before legislative changes permitted stepparent adoptions,³³ courts would commonly overlook the statutorily-required “cut-off” provision and allow the adoption to proceed.³⁴ However, the other birth parent’s legal rights may be terminated by the stepparent adoption, thereby ensuring that the child will have only two legal parents.³⁵

30. See Schacter, *supra* note 8, at 936-37; see also, e.g., CAL. FAM. CODE § 8617 (Deering 2004) (“The birth parents of an adopted child are, from the time of the adoption, relieved of all parental duties towards, and all responsibility for, the adopted child, and have no right over the child.”); N.Y. DOM. REL. LAW § 117-1(a) (McKinney 2004) (“[A]fter the making of an order of adoption the birth parents of the adoptive child shall be relieved of all parental duties toward and of all responsibilities for and shall have no rights over such adoptive child . . .”).

31. See, e.g., CAL. FAM. CODE § 8616 (Deering 2004) (“After adoption, the adopted child and the adoptive parents shall sustain towards each other the legal relationship of parent and child and have all the rights and are subject to all the duties of that relationship.”); N.Y. DOM. REL. LAW § 117-1(c) (McKinney 2004) (“The adoptive parents or parent and the adoptive child shall sustain toward each other the legal relation of parent and child and shall have all the rights and be subject to all the duties of that relation including the rights of inheritance from and through each other and the birth and adopted kindred of the adopted parents or parent.”).

32. The new spouse cannot be the biological parent. If that were the case, there would be no need for adoption unless that parent had previously relinquished his or her parental rights.

33. California changed its laws in 1994 to accommodate stepparent adoptions. See CAL. FAM. CODE §§ 9000-07 (Deering 2004 and Supp. 2005). Stepparent adoptions may be the most popular form of adoption in the United States. See Schacter, *supra* note 8, at 937.

34. As early as 1925, the California Supreme Court addressed the issue of severance of parental rights in a stepparent adoption. *Marshall v. Marshall*, 239 P. 36 (Cal. 1925). The court held that despite the statutory provision requiring termination of the birth parent’s rights prior to any adoption, the stepparent adoption did not sever the birth mother’s rights when her new spouse adopted the children. *Id.* at 38. The court declared that the stepparent adoption was valid and that the birth mother retained her parental rights and responsibilities. *Id.*

35. See Schacter, *supra* note 8, at 938. In some situations, a child may be raised by three adults: the child’s two biological parents and the partner of one

2. *Second-Parent Adoptions*

In the past decade, an increasing number of gay and lesbian couples have sought to raise children together,³⁶ resulting in a movement to win adoption rights for families with same-sex parents.³⁷ Same-sex parents have pushed for second-parent adoptions because the legal status of being an adoptive parent or adoptive child carries with it many benefits. For instance, the adoptive parent will have the same rights as the biological parent, including the ability to consent to life-saving emergency medical procedures for the child.³⁸ By virtue of an adoption, the child may also become eligible for the adoptive parent's health insurance, life insurance or disability benefits, and any possible inheritance from the adoptive parent.³⁹ Without an adoption, neither the child nor the adoptive parent is afforded any of these rights.⁴⁰

of the biological parents. The law does not yet permit a child to have three legal parents. See Pamela Gatos, Note, *Third-Parent Adoption in Lesbian and Gay Families*, 26 VT. L. REV. 195, 196 (2001).

36. Reports indicate that the total number of children nationwide living with at least one gay parent ranges from six to fourteen million. See ACLU Fact Sheet: Overview of Lesbian and Gay Parenting, Adoption and Foster Care, <http://www.aclu.org/LesbianGayRights/LesbianGayRights.cfm?ID=9212&c=104> (1999).

37. Currently, seven states (California, Connecticut, Illinois, Massachusetts, New Jersey, Pennsylvania, and Vermont) and the District of Columbia have approved second parent adoption for gay and lesbian parents either by statute or appellate court ruling. See Human Rights Campaign Foundation Second-Parent Adoption/Stepparent Adoption Laws in the U.S., <http://www.hrc.org/yourcommunity> (follow "Second Parent/Stepparent Adoption Laws in the U.S." hyperlink) (2003) [hereinafter Human Rights Campaign Foundation]. California has also modified its stepparent adoption laws to include domestic partners who have registered in the state domestic partner registry. See CAL. FAM. CODE. § 9000 (Deering 2004 and Supp. 2005). The movement to win adoption rights for same-sex parents is made more difficult because circuit courts have declined to deem the right to adopt as a fundamental right. See *Lofton v. Sec'y of Dep't of Children & Family Servs.*, 377 F.3d 1275, 1277 (11th Cir. 2004), cert. denied, 125 S. Ct. 869 (2005) (upholding Florida's ban on adoption by homosexuals because adoption is not a fundamental right, nor is sexual orientation a basis for suspect classification). See also *Mullins v. Oregon*, 57 F.3d 789, 794 (9th Cir. 1995); *Lindley v. Sullivan*, 889 F.2d 124, 131 (7th Cir. 1989).

38. See Schacter, *supra* note 8, at 935.

39. See *id.*

40. Although Vermont's civil union statute establishes a presumption that the members of the civil union are the parents of a child born into the union, it is possible that other states will not recognize the presumption due to the Defense of Marriage Act. Therefore, it may be less risky to seek a second-parent adoption than rely on presumptions afforded by state laws. See Mark Strasser,

Adoption also provides for the emotional well-being of the child.⁴¹ Should the couple separate or the biological parent die, the non-legal parent would have no standing to ask for custody or visitation rights without a legal adoption.⁴² The absence of the non-legal parent may have a tremendous psychological impact on the child, who has likely developed an emotional bond with this parent.⁴³ In both situations, the child is the one who ultimately suffers the emotional and psychological impact of “losing” the non-legal parent.⁴⁴ Additionally, the potential conflict arising out of a custody battle between the non-legal parent and the biological parent’s relatives may adversely impact the child’s well-being.⁴⁵

Because of the legal benefits offered by adoption, state legislatures and courts have sought ways to allow same-sex parents to adopt. Stepparent adoptions cannot be used by same-sex couples because they are not permitted to marry.⁴⁶ As a result, gay and lesbian advocates around the United States have encouraged both courts and state legislatures to change the laws governing adoption.⁴⁷ Through these advocacy efforts, “second-parent adoptions,” which are similar to stepparent adoptions, have emerged in the past decade.⁴⁸

To keep up with the rapidly changing landscape of family

When is a Parent not a Parent? On DOMA, Civil Unions, and Presumptions of Parenthood, 23 CARDOZO L. REV. 299, 323 (2001).

41. See Schacter, *supra* note 8, at 936.

42. See *Guardianship of Z.C.W.*, 84 Cal. Rptr. 2d 48, 50-51 (Cal. Ct. App. 1999) (declaring that a former lesbian partner was not entitled to visitation rights); *Kazmierczak v. Query*, 736 So. 2d 106, 110 (Fla. Dist. Ct. App. 1999) (holding that a former partner lacked standing to seek custody of or visitation with the child of an ex-partner); Schacter, *supra* note 8, at 936; see also Taylor, *supra* note 2. But see *Carvin v. Britain (In re Parentage of L.B.)*, No. 75626-1, 2005 Wash. LEXIS 861, at *3 (Wash. 2005) (granting *de facto* parents the right to petition for a determination of legal parentage); *E.N.O. v. L.M.M.*, 711 N.E.2d 886, 892-93 (Mass. 1999) (granting the former partner of a lesbian biological mother visitation rights based on the best interests of the child standard).

43. See Schacter, *supra* note 8, at 936.

44. See Daniel Pollack & Susan Mason, *Mandatory Visitation: In the Best Interest of the Child*, 42 FAM. CT. REV. 74 (2004), available at <http://www.blackwell-synergy.com/toc/fcre/42/1> (follow “Mandatory Visitation” pdf hyperlink); see also Schacter, *supra* note 8, at 936.

45. See Pollack & Mason, *supra* note 44, at 74.

46. See *supra* Part II.A.1.

47. See, e.g., Sharon S. v. Superior Court, 73 P.3d 554 (Cal. 2003); *In re B.L.V.B.*, 628 A.2d 1271 (Vt. 1993); see also Schacter, *supra* note 8, at 935.

48. See, e.g., *In re M.M.D.*, 662 A.2d 837, 860-61 (D.C. 1995).

law, courts have devised creative ways of permitting same-sex couples to adopt children.⁴⁹ Some courts analogize second-parent adoptions to stepparent adoptions because, in both situations, the child's custodial and biological parent does not wish to surrender his or her right to the child.⁵⁰ Courts have applied the same rationale used to validate stepparent adoptions in recognizing second-parent adoptions.⁵¹ This has allowed the courts to overlook or excuse the requirement of the "cut-off" provision.⁵²

Another method of overcoming the "cut-off" provision is through the use of statutory construction.⁵³ To justify not enforcing the provision, some courts follow the rule that statutes should not be interpreted so as to produce absurd results.⁵⁴ Courts following this approach reason that strictly construing adoption laws to terminate the rights of a parent who intends to raise a child jointly with an adoptive parent would produce the absurd results that courts seek to avoid.⁵⁵ Therefore, in a situation where the non-biological parent wishes to adopt, these courts have held that the "cut-off" provision is no longer mandatory, especially if adoption is in the best interests of the child.⁵⁶

However, not all courts have been willing to overlook the "cut-off" requirement, perhaps because of the sensitive nature

49. See Schacter, *supra* note 8, at 938-39.

50. See *In re M.M.D.*, 662 A.2d at 860.

51. See *id.*

52. See *supra* Part II.A.1; see also *Sharon S.*, 73 P.3d at 561 (holding that termination of a birth parent's rights is not a mandatory prerequisite to every adoption and that second-parent adoptions are valid under California's independent adoption laws); *In re B.L.V.B.*, 628 A.2d at 1273 (holding that the birth mother's parental rights need not be terminated if the children are to be raised with the help of the mother's partner).

53. See Schacter, *supra* note 8, at 938.

54. See *In re Estate of Evans*, 135 N.W.2d 832, 834 (Wis. 1965).

55. See Schacter, *supra* note 8, at 938; see also *In re M.M.D.*, 662 A.2d at 860-61; *In re B.L.V.B.*, 628 A.2d at 1272-74.

56. In *In re B.L.V.B.*, the probate court initially denied the adoption because the proposed adoptive mother "[did] not satisfy the statutory prerequisite to adoption." *In re B.L.V.B.*, 628 A.2d at 1271. The Vermont Supreme Court held that enforcing the termination of the birth mother's rights under the Vermont statute would reach an "absurd result." *Id.* at 1273. It would also be inconsistent with the best interests of the children and public policy of Vermont to enforce the requirement. *Id.*

In a recent California decision, the California Supreme Court held that termination of parental rights is not a mandatory prerequisite to every valid adoption. *Sharon S.*, 73 P.3d at 561.

of gay and lesbian rights.⁵⁷ Many courts have strictly adhered to state statutory requirements and have refused to grant second-parent adoptions because of same-sex couples' failure to meet these requirements.⁵⁸

An increasing number of states have been granting second-parent adoptions. Currently, seven states plus the District of Columbia permit second-parent adoptions,⁵⁹ and as many as eighteen other states have granted these adoptions at the trial court level.⁶⁰ The second-parent adoptions granted by these trial courts may be awaiting appellate court rulings. However, appellate courts in four states have ruled against permitting second-parent or stepparent adoption by same-sex couples.⁶¹

B. The Full Faith and Credit Clause

1. History of the Full Faith and Credit Clause

The Full Faith and Credit Clause ("the Clause") was designed for the purpose of creating a unified nation out of several different states.⁶² It provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect

57. See *In re Angel Lace M.*, 516 N.W.2d 678 (Wis. 1994).

58. Some courts have viewed the cut-off requirement as critical evidence that the legislature did not intend to authorize second-parent adoptions. See, e.g., *In re Angel Lace*, 516 N.W.2d at 684. The Wisconsin Supreme Court stated that because the Wisconsin legislature had specifically exempted stepparent adoptions from the "cut-off" provision, the legislature had indicated its intent not to extend the exemption any further. *Id.*

59. Because courts have recognized second-parent adoptions through statutory interpretation and not constitutional adjudication, state legislatures may overturn any judicially recognized second-parent adoption. However, there has been no evidence thus far that any state legislature has taken such action. See Schacter, *supra* note 8, at 945.

60. Human Rights Campaign Foundation, *supra* note 37. In these states, second-parent adoptions have only been approved in certain counties, meaning that a higher state court or the state legislature could invalidate them. *Id.*

61. Colorado, Nebraska, Ohio, and Wisconsin currently do not permit second-parent adoptions. *Id.* There may be other options for same-sex couples in states that do not allow second-parent or stepparent adoptions, such as through civil union or domestic partnership rights. See, e.g., Strasser, *supra* note 40, at 311. However, states that do not permit second-parent adoptions for same-sex couples are unlikely to recognize the rights of gay families.

62. See MCDUGAL, *supra* note 26, § 65, at 263.

thereof.”⁶³

The dispute surrounding this clause has focused on whether the Framers intended unification to be achieved directly through the Clause or through the power delegated to Congress.⁶⁴ History suggests that the first sentence of the Clause gives the states a narrow command to admit properly authenticated copies of sister-state judgments into evidence.⁶⁵ These authenticated documents are to be accepted as *prima facie* proof of a valid judgment.⁶⁶ An alternative view is that the first sentence of the Clause contains choice-of-law and jurisdictional commands to the states.⁶⁷ These commands require states to enforce the statutes, records, and judgments of other states, and specify when and to what extent the enforcement needs to occur.⁶⁸ The modern decisions addressing the Clause support the view that the first sentence of the Clause contains some minimal choice-of-law commands to the states.⁶⁹

The second sentence of the Full Faith and Credit Clause grants Congress the power to prescribe rules for authenticating state public acts, records, and judgments.⁷⁰ Furthermore, it gives Congress the power to prescribe what effect these public acts, records, and judgments should have in other states.⁷¹ Congress first exercised its power under the second sentence of the Clause by enacting the Full Faith and Credit implementing statute in 1790.⁷² The most recent exercise of

63. U.S. CONST. art. IV, § 1.

64. See MCDUGAL, *supra* note 26, § 65, at 263.

65. See *id.* at 264. The Clause also requires states to admit properly authenticated copies of sister-state statutes and official records as proof that these documents existed and dealt with the matters contained in the authenticated copy. *Id.*

66. See *id.* See also *id.* § 67 for a more detailed history about the impact of the 1790 implementing statute.

67. See *id.* § 65, at 264.

68. See *id.*

69. See *id.*

70. See MCDUGAL, *supra* note 26, § 65, at 264.

71. See *id.*

72. Act of May 26, 1790, ch. 11, 1 Stat. 122 (1790) (current version at 28 U.S.C. § 1738 (2000)). The implementing statute was amended to its present form in 1948. See 28 U.S.C. § 1738; MCDUGAL, *supra* note 26, § 65, at 265. The current form of the statute sets forth the proper standards for authentication of records and judicial proceedings. It states that “[s]uch Acts, records and judicial proceedings or copies thereof . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.” 28 U.S.C. § 1738.

congressional power under the Clause occurred in 1996, when the controversial Defense of Marriage Act ("DOMA") was enacted.⁷³

Case law has consistently held that states must give full faith and credit to valid judgments rendered in sister states.⁷⁴ In 1813, the United States Supreme Court held that a properly authenticated state judgment should have the "same effect" in other states as it would have in the state that rendered the judgment.⁷⁵ This Court decision set forth the "same effect" rule, subject to certain exceptions.⁷⁶ These exceptions occur when the judgment would be enforceable in the judgment-rendering state, but not in the judgment-enforcing state.⁷⁷ The Court made clear, however, that a state may not refuse to enforce a judgment of another state simply because the judgment violates the public policy of the judgment-enforcing state.⁷⁸

This doctrine was further articulated in *Fauntleroy v. Lum*,⁷⁹ a case involving a contract governed by Mississippi law, but with a judgment rendered by a Missouri court.⁸⁰ In that case, the Mississippi courts refused to enforce the judgment rendered by the Missouri court.⁸¹ In addressing the issue of enforcement, the United States Supreme Court held that enforcement of the judgment could not be refused on the

73. 28 U.S.C. § 1738C (2000). DOMA allows states to refuse to give effect to any "public act, record, or judicial proceeding" of another state that treats a relationship between people of the same sex as a marriage. *Id.*

74. *See, e.g., Baker v. Gen. Motors Corp.*, 522 U.S. 222 (1998); *Williams v. North Carolina (Williams I)*, 317 U.S. 287 (1942); *Mills v. Duryee*, 11 U.S. (7 Cranch) 481 (1813).

75. *See Mills*, 11 U.S. at 484. Justice Story acknowledged that Congress used evidentiary terms in the 1790 implementing statute, but concluded that Congress intended to address what "effect" state judgments should have in other states. *Id.*

76. *See Whitten, Choice of Law, supra* note 11, at 841-42. Examples of "true exceptions" include "judgments barred by the statute of limitations of the judgment-enforcing state applicable to foreign judgments and so-called 'pena judgments' of other states." *See id.* Other exceptions, which are not "true exceptions," are related to res judicata doctrines and include traditional methods of collateral attack on a judgment, such as lack of subject matter or personal jurisdiction. *See id.*

77. *See id.* at 842.

78. *See McDougal, supra* note 26, § 67, at 271.

79. *Fauntleroy v. Lum*, 210 U.S. 230 (1908).

80. *Id.* at 233-34.

81. *Id.* at 234.

grounds that it violated Mississippi's public policy.⁸² As long as the judgment-rendering court had proper subject matter⁸³ and personal jurisdiction,⁸⁴ the judgment was valid in Missouri and had to be given full faith and credit ("same effect") in Mississippi.⁸⁵

2. *The Full Faith and Credit Clause as Applied to Divorce Decrees—the Williams Cases*

In understanding how courts might construe second-parent adoptions in light of the Full Faith and Credit Clause, it is helpful to examine how the Clause has been applied in other areas of family law. Although the *Williams* cases⁸⁶ concern interstate recognition of divorce decrees, they "establish interstate marital status recognition doctrines that are relevant, suggest jurisdictional principles that are potentially significant, and illustrate interstate comity principles that are profoundly pertinent to the growing debate over same-sex marriage recognition."⁸⁷ Furthermore, because marriage, divorce, and adoption are important public policy concerns for each state, the *Williams* cases provide a helpful comparison of divorce decrees and adoption decrees.

In *Williams I*,⁸⁸ the Court addressed the question of whether North Carolina was required to recognize Nevada divorce decrees issued to two individuals who had been previously married to separate spouses.⁸⁹ In 1940, Otis Williams

82. *Id.* at 237. The Court held that even if the Missouri judgment was based on a misapplication of Mississippi law, the Mississippi court could not refuse enforcement. *Id.*

83. Subject matter jurisdiction refers to the jurisdiction that a certain court has over a class of cases under the constitution and laws governing the court system of a state. See Whitten, *Choice of Law*, *supra* note 11, at 818.

84. Personal jurisdiction refers to the power of the court "to bring a person into its adjudicative process" and the jurisdiction that the court maintains over the individual's "personal rights, rather than merely over property interests." BLACK'S LAW DICTIONARY 870 (8th ed. 2004).

85. *Fauntleroy*, 210 U.S. at 237.

86. See *Williams v. North Carolina (Williams II)*, 325 U.S. 226 (1945); *Williams v. North Carolina (Williams I)*, 317 U.S. 287 (1942). Like adoption, divorce proceedings are handled through the court system, with a court issuing a final divorce order, provided subject matter and personal jurisdiction are proper. See, e.g., CAL. FAM. CODE § 2338 (Deering 2004).

87. Lynn D. Wardle, *Williams v. North Carolina, Divorce Recognition, and Same-Sex Marriage Recognition*, 32 CREIGHTON L. REV. 187, 188 (1998).

88. *Williams I*, 317 U.S. at 287.

89. See *id.* at 292-93.

and Lillie Shaver moved to Las Vegas, Nevada, where they established a residence.⁹⁰ At that time, each individual was married to another person.⁹¹ Six weeks after moving to Las Vegas, Williams and Shaver each filed for divorce from their respective spouses in Nevada state court.⁹² After their divorces were finalized, the two were married in Nevada.⁹³ Shortly thereafter, Williams and Shaver returned to North Carolina, where they were indicted for bigamy on the grounds that the Nevada divorce decrees were invalid.⁹⁴ Both Williams and Shaver were convicted and sentenced to prison.⁹⁵ On appeal, the North Carolina Supreme Court affirmed the convictions, concluding that North Carolina was not required to give the Nevada divorce decrees full faith and credit.⁹⁶

In its review, the United States Supreme Court focused on "whether the domiciliary state of one spouse could enter a divorce decree entitled to full faith and credit in the state of marital domicile where an abandoned spouse still lived."⁹⁷ Justice Douglas's majority opinion emphasized that full faith and credit must be given to final divorce decree judgments.⁹⁸ While states are free to establish their own divorce policies based on societal morals, the recognition of another state's valid judgment must adhere to the Constitution.⁹⁹ The

90. See *id.* at 289. The question of whether Williams and Shaver were properly domiciled in Nevada was the subject of *Williams II*. *Williams II*, 325 U.S. at 266.

91. See *Williams I*, 317 U.S. at 289. Williams was married to Carrie Wyke in 1916 and had lived with her for twenty-four years. See *id.* Shaver had been married to Thomas Hendrix for twenty years prior to establishing residence with Williams. See *id.*

92. *Id.* at 289.

93. See *id.* at 290.

94. See *id.*

95. *Id.* at 289.

96. *Id.* at 291.

97. Wardle, *supra* note 87, at 192. The Court recognized that the issue before it was not whether a North Carolina court could refuse to give full faith and credit to a Nevada divorce decree simply because it disagreed with the Nevada court's finding. See *Williams I*, 317 U.S. at 302. The Nevada court found that Williams and Shaver had adequately established their domicile in Nevada. *Id.*

98. See *Williams I*, 317 U.S. at 299, 303.

99. See *id.* at 303. A public policy exception exists with regard to state statutes, as "[t]he Full Faith and Credit Clause does not compel 'a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.'" *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 232 (1998) (quoting *Pac. Employers Ins. Co. v. Indus. Accident Comm'n* 306 U.S. 493, 501 (1939)).

Court's opinion stated:

When a court of one state acting in accord with the requirements of procedural due process alters the marital status of one domiciled in that state by granting him a divorce from his absent spouse, we cannot say its decree should be excepted from the full faith and credit clause merely because its enforcement or recognition in another statute would conflict with the policy of the latter.¹⁰⁰

Further, the Court emphasized the potential policy implications of a state's refusal to recognize valid divorce decrees rendered by a sister state.¹⁰¹ There was strong concern about the problems that would result if an individual remarried without being aware that his or her previous marriage was still valid.¹⁰² A rule that would permit one state to refuse to recognize another state's final judgments could cause "considerable disaster to innocent persons' and 'bastardize children hitherto supposed to be the offspring of lawful marriage,' or else encourage collusive divorces."¹⁰³

Justice Douglas also stressed the difference between a state's need to recognize another state's court judgment, as opposed to another state's statutes, and emphasized the importance of recognizing the former.¹⁰⁴ He explained that adherence to the Full Faith and Credit Clause was necessary to alter "the status of the several states as independent foreign sovereignties' by making them 'integral parts of a single nation.'"¹⁰⁵ Therefore, it was crucial that states comply with the Full Faith and Credit Clause in order to create a cohesive nation.¹⁰⁶

The Supreme Court remanded the case¹⁰⁷ and North

100. *Williams I*, 317 U.S. at 303. Justice Douglas also noted that "[t]hus even though the cause of action could not be entertained in the state of the forum either because it had been barred by the local statute of limitations or contravened local policy, the judgment thereon obtained in a sister state is entitled to full faith and credit." *Id.* at 294.

101. *See id.* at 300-01.

102. *Id.* at 299.

103. *Id.* at 301 (quoting *Haddock v. Haddock*, 201 U.S. 562, 628 (1906) (Holmes, J., dissenting)).

104. *See id.* at 302-04; *supra* text accompanying note 101.

105. *Williams I*, 317 U.S. at 295 (quoting *Milwaukee County v. White Co.*, 296 U.S. 268, 276-77 (1935)).

106. *See id.* at 303.

107. *Id.* at 304.

Carolina then brought a second suit against Williams and Shaver.¹⁰⁸ In *Williams II*, North Carolina claimed that the divorce judgments were invalid, not on the basis of full faith and credit issues, but because Williams and Shaver had not legitimately established their domicile in Nevada.¹⁰⁹ Under this theory, North Carolina argued that the Nevada courts lacked jurisdiction to issue the divorce decrees.¹¹⁰ At trial, the jury found Williams and Shaver guilty of bigamy.¹¹¹ The subsequent appellate courts upheld the convictions, and the case once again came before the United States Supreme Court.¹¹²

The majority opinion¹¹³ framed the issue in *Williams II* as whether North Carolina could refuse to honor the Nevada divorce decrees because North Carolina found that the parties had not established domicile in Nevada.¹¹⁴ In upholding the convictions, the Court stated that there was ample evidence that Williams and Shaver were not domiciled in Nevada, and therefore the divorce decree was wrongfully issued because the court lacked personal jurisdiction over the couple.¹¹⁵

The *Williams* cases are an important precedent when considering future applications of the Full Faith and Credit Clause. These decisions show that regardless of a state's public policy concerns regarding divorce, the state must still recognize a valid divorce decree issued by a sister state. Although these cases concern interstate recognition of divorce decrees, the same considerations should apply to properly issued adoption decrees.

108. See *Williams v. North Carolina (Williams II)*, 325 U.S. 226, 226 (1945).

109. See *id.* at 227.

110. See *id.* Establishment of domicile in one state implies a nexus between the individual and the state so that the state can control legal relations and responsibilities that are crucial to the functioning of society. See *id.* at 229. Without domicile, the state lacks the power to render a divorce decree. See *id.*

111. See *id.* at 227. By the time the second trial commenced, Otis's former wife had already passed away and Lillie's husband had obtained a North Carolina divorce decree and remarried. See Wardle, *supra* note 87, at 202.

112. See Wardle, *supra* note 87, at 202.

113. Justice Frankfurter, who wrote a concurring opinion in *Williams I*, wrote the majority opinion in *Williams II*, while Justice Douglas, the author of the majority opinion in *Williams I*, joined Justice Black's dissenting opinion in *Williams II*. *Williams II*, 325 U.S. at 227, 261 (Black, J., dissenting).

114. See *id.* at 227.

115. *Id.* at 234.

3. *Interstate Recognition of Same-Sex Marriages—the Defense of Marriage Act*

Although not directly related to adoption, the controversial Defense of Marriage Act¹¹⁶ may impact the policy debate over recognition of same-sex adoptions. Enacted by Congress,¹¹⁷ the statute allows states to refuse to recognize same-sex marriages that other states have authorized.¹¹⁸ The text of DOMA provides that:

No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship.¹¹⁹

The inclusion of “judicial proceeding[s]” in DOMA has caused much controversy within the legal community.¹²⁰ Some legal scholars argue that by including judicial proceedings in DOMA, Congress has rendered DOMA unconstitutional because it directly conflicts with the Full Faith and Credit Clause.¹²¹ Others argue that it is necessary to consider judicial proceedings as part of DOMA in order to avoid the use of a declaratory judgment to validate same-sex marriages.¹²² For example, if Hawaii were to recognize same-sex marriages, same-sex couples could establish their domicile in

116. 28 U.S.C. § 1738C (2000).

117. Some scholars believe that Congress did not possess the constitutional authority to pass DOMA. See Mark Strasser, *Baker and Some Recipes for Disaster: on DOMA, Covenant Marriages, and Full Faith and Credit Jurisprudence*, 64 BROOK. L. REV. 307 (1998). But see Wardle, *supra* note 87, at 219-33 (arguing that Congress had the power to enact DOMA).

118. See 28 U.S.C. § 1738C.

119. *Id.*

120. See Strasser, *supra* note 117, at 310-13; Whitten, *Original Understanding*, *supra* note 10, at 346-94.

121. See Strasser, *supra* note 117, at 350. Strasser suggests that Congress is given the power to prescribe how much credit is due to state judgments, as long as it does not “attempt to circumvent the explicit constitutional requirement that full faith and credit be given.” *Id.*

122. *Id.* at 342-45. Use of declaratory judgments has been suggested as a method of validating the needs of those who “wish to adopt outside ‘normal adoption proceedings.’” See Casey Martin, Comment, *Equal Opportunity Adoption & Declaratory Judgments: Acting in a Child’s Best Interest*, 43 SANTA CLARA L. REV. 569, 584-87 (2003).

Hawaii, marry, and subsequently seek declaratory judgments¹²³ in Hawaii state courts to affirm the validity of their marriages.¹²⁴ A declaratory judgment would have the full force and effect of a final judgment and be subject to the Full Faith and Credit Clause.¹²⁵

C. History and Current Status of the Oklahoma Statute and Finstuen v. Edmondson

The Oklahoma statute refusing to recognize adoptions by same-sex couples ("section 7502-1.4")¹²⁶ was passed in the spring of 2004 as part of a bill addressing foreign adoption issues.¹²⁷ There is little, if any, legislative history or publicly available information on the debate conducted prior to section 7502-1.4's enactment.¹²⁸ However, societal opposition to homosexuality in Oklahoma may have assured its passage, especially in the wake of a referendum banning gay marriage in Oklahoma.¹²⁹

The enactment of section 7502-1.4 may have been prompted by a March 2004 opinion issued by Oklahoma Attorney General Drew Edmondson pertaining to birth certificates of children raised by same-sex parents.¹³⁰ The opinion

123. A declaratory judgment may be issued when "an actual controversy has existed which requires a judgment to determine legal rights and relations." *Demorest v. DiPentima*, 324 N.W.2d 634, 636 (Mich. Ct. App. 1982). *See also* Strasser, *supra* note 117, at 342-45.

124. *See* Strasser, *supra* note 117, at 342-45.

125. *See id.* at 345. There is some controversy about requiring full faith and credit in the case of equity judgments. *See id.* at 343. However, the U.S. Supreme Court has stated that "[t]he Court has never placed equity decrees outside the full faith and credit domain." *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 234 (1998).

126. OKLA. STAT. ANN. tit. 10, § 7502-1.4 (West Supp. 2004).

127. *See* Amy Fagan, *Same-Sex Adoption Negated in State; Oklahoma Law Reverses Ruling*, WASH. TIMES (Wash., D.C.), May 7, 2004, at A05.

128. A search of the Oklahoma State Legislature's website failed to reveal any legislative history. Oklahoma State Legislature, <http://www.lsb.state.ok.us> (last visited Aug. 31, 2005). *See also* Second Amended Complaint, *supra* note 1, at ¶ 23.

129. *See* Fagan, *supra* note 128; Second Amended Complaint, *supra* note 1, at ¶ 23 (quoting State Senator James Williamson's purpose in proposing the amendment to Oklahoma section 7502-1.4: "[t]he key component of the radical homosexual agenda is to take away the right of states to regulate and define adoptions just as they are trying to redefine marriage across the nation.").

130. *See* Op. Okla. Att'y Gen. 04-008 (2004), available at 2004 WL 557472; *see also* Fagan, *supra* note 127 (describing how Attorney General Drew Edmondson's decision was overturned by section 7502-1.4).

concluded that if a child is born in Oklahoma and is adopted in another state by a same-sex couple, Oklahoma must recognize the adoption.¹³¹ Furthermore, Oklahoma would then be required to issue an adoptive birth certificate for the child, listing both same-sex partners as parents.¹³² The Attorney General's opinion stated that pursuant to the Full Faith and Credit Clause, an out-of-state adoption decree must be given the same legal effect in Oklahoma as it would in the state that issued the decree.¹³³

In an effort to circumvent the Attorney General's opinion,¹³⁴ the Oklahoma legislature revised section 7502-1.4, the statute that specifically addresses the adoption recognition requirements.¹³⁵ Less than six months after the law was enacted, Magro and Finstuen filed a lawsuit challenging section 7502-1.4 on constitutional grounds.¹³⁶ The plaintiffs sought a declaratory judgment stating that section 7502-1.4 violates the Full Faith and Credit Clause, violates the Equal Protection Clause of the Fourteenth Amendment, and hinders their constitutional right to travel.¹³⁷ All of the plaintiffs are same-sex couples who have adopted children through second-parent adoptions and are either living in, or wish to visit, Oklahoma.¹³⁸

Along with Magro and Finstuen, two other couples have joined the lawsuit challenging section 7502-1.4. Greg Hampel

131. See Op. Okla. Att'y Gen. 04-008, *supra* note 130, at ¶ 16.

132. See *id.*

133. See *id.* Prior to amendment in 2004, section 7502-1.4 stated:

The courts of this state shall recognize a decree, judgment, or final order creating the relationship of parent and child by adoption, issued by a court or other governmental authority with appropriate jurisdiction in a foreign country or in another state or territory of the United States. The rights and obligations of the parties as to matters within the jurisdiction of this state shall be determined as though the decree, judgment, or final order were issued by a court of this state.

Id.

134. See *House of Realty, Inc. v. City of Midwest City*, 109 P.3d 314, 320 (Okla. 2004) (stating that an opinion issued by the Attorney General construing a statute has persuasive authority). Therefore, by virtue of amending section 7502-1.4, the Oklahoma legislature attempted to ameliorate the effects of the Opinion.

135. See Fagan, *supra* note 127.

136. *Finstuen v. Edmondson*, 2004 WL 3139176 (W.D. Okla. Sept. 15, 2004) (No. 04-CV1152).

137. Second Amended Complaint, *supra* note 1, at ¶¶ 26-40, 47-50.

138. *Id.* at ¶¶ 13-15.

and Ed Swaya,¹³⁹ residents of Washington, adopted their daughter Vivian in an "open adoption," where the adopting family continues to maintain a relationship with the birth mother.¹⁴⁰ The couple is now hesitant to bring Vivian into Oklahoma to visit her biological mother because of the risk that the State will refuse to recognize the adoptive parents' rights.¹⁴¹

Lucy and Jennifer Doel, the adoptive parents of Ellie, who was born in Oklahoma,¹⁴² have also joined in the lawsuit. The Doels, who are registered domestic partners under California law,¹⁴³ agreed to adopt Ellie when her biological parents could no longer care for her.¹⁴⁴ Though the adoptions were finalized in California,¹⁴⁵ the family has since moved to Oklahoma.¹⁴⁶ Lucy and Jennifer have applied for a birth certificate in Oklahoma that would properly identify them both as Ellie's legal parents, but the language of the statute may bar the issuance of such a document.¹⁴⁷

The case is currently set for a bench trial in February 2006.¹⁴⁸ Previously, Oklahoma had asked that the lawsuit be dismissed on the grounds that the Eleventh Amendment¹⁴⁹

139. Before the new Oklahoma statute was passed, Hampel and Swaya had asked the State of Oklahoma to issue an amended birth certificate in accord with a Washington court's adoption decree listing both men as parents of their adopted daughter. Lambda Legal, *Federal Judge Says Lawsuit Seeking to Strike Down Oklahoma's Antigay Adoption Law Can Proceed* (Dec. 8, 2004), <http://www.lambdalegal.org/cgi-bin/iowa/documents/record?record=1576>. Oklahoma Attorney General Drew Edmondson, a named defendant in *Finstuen*, issued an opinion stating that Oklahoma must issue amended birth certificates upon receipt of a certified copy of the adoption order. Op. Okla. Att'y Gen. 04-008, *supra* note 130, at ¶ 14.

140. Second Amended Complaint, *supra* note 1, at ¶ 14. Hampel and Swaya became Vivian's legal parents under a valid adoption decree issued by the State of Washington in August 2002. *Id.*

141. *Id.*

142. *Id.* at ¶ 15.

143. See CAL. FAM. CODE § 298.5 (Deering 2004).

144. Second Amended Complaint, *supra* note 1, at ¶ 15.

145. *Id.* Lucy Doel was the first to adopt Ellie and was issued an Order of Adoption by the Los Angeles Superior Court in January 2002. *Id.* Jennifer Doel later adopted Ellie under the procedure for adoption by a domestic partner, which grants the same rights as a stepparent adoption in California. *Id.* Jennifer Doel's adoption of Ellie was finalized in June 2002. *Id.*

146. *Id.*

147. *Id.*

148. Scheduling Order at 1, *Finstuen v. Edmondson* (W.D. Okla. July 7, 2005) (No. CIV-04-1152C) (on file with the Santa Clara Law Review).

149. The Eleventh Amendment provides that "[t]he Judicial power of the

prohibits individuals from suing a state in federal court.¹⁵⁰ The trial court denied the State's motion to dismiss,¹⁵¹ and the State appealed the decision to the Tenth Circuit.¹⁵² The court of appeals recently dismissed Oklahoma's Eleventh Amendment claim,¹⁵³ allowing the case to move forward.

III. IDENTIFICATION OF THE PROBLEM

With an increasing population of children parented by same-sex couples, the need to create legal ties among these family members is becoming critical. Many state legislatures and courts have recognized the need to create a legal bond between children and parents by approving legislation permitting second-parent adoptions.¹⁵⁴ However, in light of the societal attitudes in the United States toward homosexuality, the stability of these families is threatened by legislation such as that enacted in Oklahoma.

The passage of laws similar to section 7502-1.4¹⁵⁵ may have devastating effects on the stability of same-sex families. Each state is entitled to set forth its own policies with regard to gay marriage or the right of same-sex couples to adopt.¹⁵⁶ However, the refusal to recognize valid adoptions rendered in other states raises issues of compliance with the Full Faith and Credit Clause of the Constitution. As a result, by crossing state lines a child may suddenly have only one legal guardian or no guardian at all.

The enactment of DOMA may also permit states to refuse

United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI.

150. Defendants' Motion to Dismiss for Lack of Jurisdiction at 1, *Finstuen v. Edmondson* (W.D. Okla. Oct. 13, 2004) (No. CIV-04-1152C) (on file with the Santa Clara Law Review).

151. Order Denying Defendants' Motion to Dismiss for Lack of Jurisdiction, *Finstuen v. Edmondson* (W.D. Okla. Dec. 7, 2004) (No. CIV-04-1152C) (on file with the Santa Clara Law Review).

152. *Finstuen v. Edmondson*, No. CIV-04-1152C (W.D. Okla. 2004), *appeal docketed*, No. 04-6395 (10th Cir. Dec. 16, 2004) (on file with the Santa Clara Law Review).

153. Order Dismissing Appeal, *Finstuen v. Edmondson* (10th Cir. May 4, 2005) (No. 04-6395) (on file with the Santa Clara Law Review).

154. *See supra* text accompanying note 37.

155. *See supra* Part I.

156. *See generally* *Williams v. North Carolina (Williams I)*, 317 U.S. 287, 303 (1942).

recognition of second-parent adoptions that result from a same-sex couple's relationship, such as a civil union or domestic partnership. Although DOMA only allows states to refuse recognition of rights arising under a same-sex marriage, it is possible that a civil union or domestic partnership can be likened to a marriage. Therefore, adoptions that result from a civil union or domestic partnership may be negated by DOMA.

IV. ANALYSIS

To determine the constitutionality of the Oklahoma statute, the prior history and case law surrounding the Full Faith and Credit Clause must be examined.¹⁵⁷ In addition, the public policy implications favoring enforcement of the Full Faith and Credit Clause will be discussed.¹⁵⁸ The importance of requiring states to recognize valid second-parent adoptions will also be addressed,¹⁵⁹ along with an analysis of the possible implications that DOMA may have on the validity of second-parent adoptions.¹⁶⁰

A. *Constitutionality of the Oklahoma Statute*

Throughout its history, the Full Faith and Credit Clause has always required that states enforce the valid judgments of sister states.¹⁶¹ Even divorce decrees were subject to the Clause, despite the fact that enforcing such decrees could violate an important public policy of the judgment-enforcing state.¹⁶² Supporters of section 7502-1.4 argue that there should be a public policy exception for valid state judgments.¹⁶³ However, prior case law has not recognized such an exception.¹⁶⁴ Therefore, states are required to give full faith

157. See discussion *infra* Part IV.A.

158. See discussion *infra* Part IV.B.

159. See discussion *infra* Part IV.C.

160. See discussion *infra* Part IV.D.

161. See discussion *supra* Part II.B.1.

162. See *Williams v. North Carolina (Williams I)*, 317 U.S. 287 (1942); see also discussion *supra* Part II.B.2.

163. See Marie Price, *More Seek to Join Gay-Adoption Suit*, TULSA WORLD, Nov. 10, 2004, at A10.

164. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222 (1998). Although *Baker* does not specifically address adoption decrees, the case made clear that states are not free to refuse to give full faith and credit to the judgments of sister states, even if enforcing those judgments would violate an important public policy of the enforcing state. See Strasser, *supra* note 117, at 307.

and credit to judgments of sister states, even when they violate an important public policy of the state.¹⁶⁵ The Supreme Court has been consistent in its enforcement of the Clause and has reiterated that there is "no roving 'public policy exception' to the full faith and credit due judgments."¹⁶⁶

The history surrounding the Full Faith and Credit Clause suggests that section 7502-1.4 will not pass constitutional muster.¹⁶⁷ As early as 1813, the United States Supreme Court found that state judgments should have the same effect in other states as they have in the judgment-rendering state.¹⁶⁸ This doctrine was reiterated in 1908 when the Supreme Court specifically stated that a sister-state judgment could not be refused enforcement on the grounds that it violated public policy.¹⁶⁹ Within the last ten years, the Supreme Court has again upheld this principle.¹⁷⁰

Supporters of section 7502-1.4 may argue that because adoption concerns the family, it should not be subject to the same laws that govern creditor¹⁷¹ or contract judgments,¹⁷² or injunctions.¹⁷³ However, the Supreme Court addressed the intersection of family law issues and Full Faith and Credit Clause principles in the *Williams* cases.¹⁷⁴ Although these cases dealt with divorce proceedings, their underlying family law principles would seem equally applicable in the adoption context.

In *Williams I*, Justice Douglas's majority opinion repeatedly emphasized that states cannot refuse to recognize another state's divorce decree merely because it would conflict with state policy preferences.¹⁷⁵ In deciding whether a state has the right to disregard another state's valid adoption decree, the issue is which state's public policy should be enforced. *Williams I* states that the public policy of the judg-

165. See *Baker*, 522 U.S. at 222.

166. *Id.* at 223.

167. See discussion *supra* Part II.B.1.

168. See *Mills v. Duryee*, 11 U.S. (7 Cranch) 481 (1813).

169. *Fauntleroy v. Lum*, 210 U.S. 230, 237 (1908).

170. See *Baker*, 522 U.S. at 233.

171. See *Mills*, 11 U.S. (7 Cranch) at 481.

172. See *Fauntleroy*, 210 U.S. at 233.

173. See *Baker*, 522 U.S. at 226.

174. See *Williams v. North Carolina (Williams I)*, 317 U.S. 287, 287 (1947); *Williams v. North Carolina (Williams II)*, 325 U.S. 226 (1945); see also discussion *supra* Part II.B.2.

175. See *Williams I*, 317 U.S. at 294, 303.

ment-rendering state should be enforced.¹⁷⁶ There is very little support in the case law for the creation of a public policy exception to the enforcement of valid state judgments.¹⁷⁷

Much of Justice Douglas's majority opinion focused on distinguishing *Williams I* from *Haddock v. Haddock*.¹⁷⁸ In *Haddock*, a wife in New York brought a lawsuit for separation and alimony against her husband, who had moved to Connecticut.¹⁷⁹ The husband claimed he was already divorced, based upon on a divorce decree granted by the State of Connecticut, where he had established a domicile.¹⁸⁰ The Court held that New York need not give full faith and credit to the Connecticut divorce decree because the wife was served only by publication and had not entered an appearance in the divorce proceeding.¹⁸¹

Haddock did not establish a public policy exception for divorce decrees.¹⁸² Rather, full faith and credit was not given to the Connecticut divorce decree because there was no personal jurisdiction over the wife.¹⁸³ However, to be safe, *Williams I* explicitly overruled *Haddock*¹⁸⁴ and reiterated the "same effects" doctrine found in prior case law.¹⁸⁵

The same reasoning found in *Williams I* applies to adoption decrees. Both adoption and divorce are matters of great importance to society, as they contribute to the definition of a family. Because the Supreme Court has already refused to create a public policy exception for divorce decrees, it would be logical to assume the Court will follow this precedent with

176. *Id.*

177. *But see* *Haddock v. Haddock*, 201 U.S. 562 (1906). Note, however, that *Haddock* was clearly overturned by *Williams I*, and Justice Douglas made a clear distinction between the two cases. *Williams I*, 317 U.S. at 293-99. Lack of personal jurisdiction over the wife—not a public policy exception—was the basis for allowing New York to refuse to recognize the divorce decree issued by Connecticut. *Id.* at 297.

178. *Haddock*, 201 U.S. at 562; *see Williams I*, 317 U.S. at 293-97.

179. *Haddock*, 201 U.S. at 564.

180. *Id.* at 565-66.

181. *Id.* at 567.

182. *See Williams I*, 317 U.S. at 296.

183. *See id.* at 297. Without personal jurisdiction, the Connecticut court could not render a binding judgment against the wife. *See id.* Lack of personal jurisdiction over a party is not a "true exception" to the "same effect" rule because it can be used to challenge any judgment. *See supra* note 76 and accompanying text.

184. *Williams I*, 317 U.S. at 304.

185. *See id.* at 303.

respect to adoption decrees.¹⁸⁶

The principles established in the *Williams* cases with respect to divorce decrees are applicable to adoption decrees because both are accomplished through court proceedings.¹⁸⁷ The adoption process consists of a state judicial proceeding to determine whether the statutory requirements for adoption have been met.¹⁸⁸ If a court determines that all statutory requirements for the adoption have been complied with and the adoption is in the best interests of the child,¹⁸⁹ the court will issue an adoption order.¹⁹⁰ The *Williams* cases show that failure to recognize second-parent adoptions would be contrary to established case law.

Based upon the above reasons, it would be difficult for Oklahoma to defend section 7502-1.4 against attack under the Full Faith and Credit Clause. Even the Oklahoma Attorney General came to the conclusion that adoption decrees must be given full faith and credit pursuant to the Constitution.¹⁹¹ Aside from potential relief under DOMA,¹⁹² Oklahoma may be unable to find a viable argument to defend the constitutionality of the statute.

Case law, both old and new, has held that full faith and credit must be given to valid judgments of sister states.¹⁹³ Adoption decrees are issued by a court and should be given the same protection as divorce decrees.

B. Public Policy Reasons for Enforcing the Full Faith and Credit Clause

Aside from constitutional reasons, there are policy rea-

186. The Supreme Court has even refused to create a public policy exception for judgments obtained through litigation. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 226 (1998); *Fauntleroy v. Lum*, 210 U.S. 230, 233 (1908); *Mills v. Duryee*, 11 U.S. (7 Cranch) 481, 481 (1813).

187. See *supra* note 86.

188. See Barbara J. Cox, *Adoptions by Lesbian and Gay Parents Must Be Recognized By Sister States Under the Full Faith and Credit Clause Despite Anti-Marriage Statutes that Discriminate Against Same-Sex Couples*, 31 CAP. U. L. REV. 751, 804 (2003).

189. See, e.g., CAL. FAM. CODE § 8612 (Deering 2004).

190. See, e.g., *id.*

191. Op. Okla. Att'y Gen. 04-008, *supra* note 130, at ¶ 14. See discussion *supra* note 134.

192. See discussion *infra* Part IV.D.

193. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 226 (1998); *Fauntleroy v. Lum*, 210 U.S. 230, 233 (1908); *Mills v. Duryee*, 11 U.S. (7 Cranch) 481, 481 (1813).

sons for continued enforcement of the Full Faith and Credit Clause. One of the original purposes behind the United States Constitution was to integrate the states into a more cohesive union.¹⁹⁴ That same policy objective still exists today.

As stated numerous times by Justice Douglas in *Williams I*, the purpose of the Full Faith and Credit clause is to unite the several states into a united nation.¹⁹⁵ The Clause "was adopted to 'guard the new political and economic union against the disintegrating influence of provincialism in jurisprudence.'"¹⁹⁶

Although the United States has changed dramatically both socially and economically since the signing of the Constitution, the same principles articulated by Justice Douglas should govern current court judgments. Allowing states to refuse recognition of another state's valid adoption judgment could create numerous logistical problems. The lives of families with same-sex parents would be dictated by each state's policy on second-parent adoptions. These families would have to plan their travels and employment decisions accordingly to prevent the termination of their parental rights as they cross state lines. This would interfere with their right to travel within the United States.¹⁹⁷

Furthermore, allowing states to carve out public policy exceptions to sister-state judgments may open the floodgates to more litigation. Judgments rendered with both subject matter and personal jurisdiction are final¹⁹⁸ because "[l]itigation must end somewhere."¹⁹⁹ The Supreme Court has noted that:

[the Full Faith and Credit C]ause compels that controversies be stilled so that where a state court has jurisdiction of the parties and subject matter, its judgment controls in

194. See *id.* at 295.

195. See Cox, *supra* note 188, at 777.

196. *Id.* (quoting Robert H. Jackson, *Full Faith and Credit—the Lawyer's Clause of the Constitution*, 45 COLUM. L. REV. 1, 17 (1945)).

197. See generally *Saenz v. Roe*, 526 U.S. 489, 500 (1999) (holding that the "right to travel" consists of "the right of a citizen of one [s]tate to enter and to leave another [s]tate," "the right to be treated as a welcome visitor" in the new state, and the right to be treated like citizens of the new state upon electing to become a permanent resident).

198. See Cox, *supra* note 188, at 777.

199. *Id.*

other states to the same extent as it does in the state where rendered By the constitutional provision for full faith and credit, the local doctrines of *res judicata*, speaking generally, become a part of national jurisprudence²⁰⁰

A final adoption judgment in one state means that the issues of the best interests of the child and the statutory requirements for adoption cannot be re-litigated by another state.²⁰¹ This provides stability to the parties involved in the litigation because it creates certainty in their legal rights. Preventing re-litigation is perhaps even more important with respect to adoption because of the emotional bonds between the co-parent and the child.²⁰²

Additionally, if one state refuses to recognize adoption judgments of another state, the state being refused may retaliate in kind.²⁰³ By requiring all states to adhere to the Full Faith and Credit Clause, "[a]nything taken from a state by way of freedom to deny faith and credit to law of others is thereby added to the state by way of a right to exact faith and credit of its own."²⁰⁴ One of the sovereign powers that a state is forced to relinquish under the Constitution is "[t]he right to adjudicate disputes in which courts of a sister state have already rendered judgment. In return, the state obtains the assurance that its own judgments will enjoy nationwide force."²⁰⁵ The reciprocity that is required by the Full Faith and Credit Clause assures equality between the states.²⁰⁶

200. *Id.* (quoting Andrew Koppelman, *Dumb and DOMA: Why the Defense of Marriage Act is Unconstitutional*, 83 IOWA L. REV. 1, 22 n.109 (1997)).

201. *See id.* A state can collaterally attack the adoption decree by challenging the original court's jurisdiction over the lawsuit and their ability to render a judgment. *See generally* Whitten, *Choice of Law*, *supra* note 11, at 817. However, a collateral attack is very unlikely to succeed because there is usually personal jurisdiction over the parties and subject matter jurisdiction. *See id.* at 817-40.

202. *See Cox*, *supra* note 188, at 777.

203. *See id.* at 778.

204. *Id.* (quoting Paige E. Chabora, *Congress' Power Under the Full Faith and Credit Clause and the Defense of Marriage Act of 1996*, 76 NEB. L. REV. 604, 647 (1997)).

205. *Id.* (quoting Stewart E. Sterk, *The Muddy Boundaries Between Res Judicata and Full Faith and Credit*, 58 WASH. & LEE L. REV. 47, 75 (2001)).

206. *See id.*

C. Public Policy Arguments for Recognition of Second-Parent Adoptions Across State Lines

Along with the broad problems that may occur if courts allow exceptions to the Full Faith and Credit Clause, there are many difficulties that will arise if second-parent adoptions are nullified in certain states. States that allow second-parent adoptions have recognized that it is in the state's interest to permit such adoptions.²⁰⁷ In case of separation, such adoptions would permit standing for both parents to request child support from the non-custodial parent.²⁰⁸ If the biological parent were to pass away, there would be no need for the child to enter the already over-burdened foster care system.²⁰⁹ The state would also save money on litigation costs if the co-parent challenges a court's award of custody to a biological relative of the child.

More importantly, second-parent adoptions are in the best interests of the child.²¹⁰ Adoption proceedings are slightly different than divorce proceedings because the best interests of the child are always at the forefront.²¹¹ An adoption will not be granted unless the court finds that the adoption is in the best interests of the child.²¹² If this requirement is met, the child is then given the right to have two legal parents, both of whom can make decisions for him or her.²¹³ Both legal parents would have rights to visitation and custody should the couple decide to separate, just as heterosexual couples do in a marriage.²¹⁴ If there were no second-parent adoptions, children of same-sex couples would be denied the right to have two legal guardians.²¹⁵

207. See Schacter, *supra* note 8, at 940-49.

208. See *id.*, at 936; *supra* text accompanying notes 42-45.

209. In 1999, there were an estimated half-million children in foster care in the United States, but only 20,000 qualified adoptive parents. See ACLU Fact Sheet: Overview of Lesbian and Gay Parenting, Adoption and Foster Care, *supra* note 36.

210. See Diana Lauretta, Comment, *Protecting the Child's Best Interest: Defending Second-Parent Adoptions Granted Prior to the 2002 Enactment of California Assembly Bill 25*, 33 GOLDEN GATE U. L. REV. 173 (2003).

211. See, e.g., CAL. FAM. CODE § 8612 (Deering 2004).

212. See, e.g., *id.*

213. See Schacter, *supra* note 8, at 936.

214. See *id.*

215. It is contradictory for a state to overlook the cut-off provision for step-parent adoptions but not for same-sex couples since the same public policy arguments support both. The children would be deprived of the right to have

Additionally, a state's refusal to comply with the Full Faith and Credit Clause may result in extreme difficulties and complications. As discussed in *Williams I*, a rule that allows one state to ignore another state's final divorce judgment would cause "considerable disaster to innocent persons and bastardize children" ²¹⁶ Society has an interest "in the protection of innocent offspring of marriages deemed legitimate in other jurisdictions." ²¹⁷

Practically speaking, it is possible that section 7502-1.4 would have no effect on a same-sex family passing through Oklahoma if no legal decisions needed to be made during the family's time in the State. The statute does not take children away from their families, but merely declares that the legal rights between the child and parent are nullified temporarily while in Oklahoma. However, parents are unlikely to risk losing the recognition of their legal rights over their children. Emergencies may occur where co-parents will suddenly be unable to give consent to medical treatment because they do not have the legal right to do so. In order to avoid such situations, these families may choose to restrict their travel and choice of domicile within the United States, especially if more states pass laws similar to section 7502-1.4.

If Oklahoma's statute is declared unconstitutional, it will not affect the State's public policies toward same-sex adoptions. Oklahoma, being a sovereign state within the United States, will still be permitted to enact legislation that prohibits same-sex marriage or adoption by same-sex partners. ²¹⁸ However, it is ironic that Oklahoma continues to adhere to a "best interests of the child" approach to adoption, ²¹⁹ while refusing to support adoptions that have been determined to be in the best interests of the child by other states.

Because section 7502-1.4 runs contrary to the notion that

another legal guardian merely because they were being raised by parents of the same sex.

216. *Williams v. North Carolina (Williams I)*, 317 U.S. 287, 301 (1942).

217. *Id.* at 303.

218. See OKLA. STAT. ANN. tit. 10, § 7503-1.1 (West Supp. 2004) (listing only the husband or wife of the biological parent of the child as being eligible to adopt). Florida and Mississippi have already enacted statutes that prevent same-sex couples from adopting. See FLA. STAT. § 63.042(d) (2004); MISS. CODE ANN. § 93-17-3 (2004); see also *supra* text accompanying notes 24-25.

219. See OKLA. STAT. ANN. tit. 10, § 7501-1.2 (West 1998).

adoption is in the best interests of the child,²²⁰ it should be struck down. Promoting the best interests of the child is an important public policy reason for granting second-parent adoptions.²²¹ Second-parent adoptions provide stability for the children of same-sex parents and prevent the penalization of those raised in a non-traditional family. Section 7502-1.4 fails to take any of these crucial public policy considerations into account and does not promote the best interests of the child.

D. Implications of DOMA

Although DOMA does not expressly address adoption, it is possible that some politicians and judges will construe DOMA as a mandate against any rights conferred upon families with same-sex parents. Cases calling for the interpretation of DOMA are still pending in the court system, and the Supreme Court has yet to articulate how the statute should be construed.²²² One crucial issue surrounding DOMA is whether it should apply only to same-sex marriages performed contrary to the law of the domicile at the time of the marriage, or to other marriages as well.²²³

Another lingering question under DOMA is whether all states should acknowledge the benefits and rights that may emanate from same-sex marriage.²²⁴ DOMA permits states to refuse to give effect to “[any right or claim arising from] a relationship between persons of the same sex [that is treated]

220. Most, if not all, adoption statutes are written such that the adoption must be in the best interests of the child before it will be granted. *See, e.g.*, CAL. FAM. CODE § 8612 (Deering 2004).

221. *See supra* text accompanying notes 37-40.

222. A federal judge recently dismissed a lawsuit filed by a lesbian couple in Florida that wanted their Massachusetts marriage recognized in Florida. Bob Egelko, *Right to Reject Gay Rites [sic] Gets First OK / U.S. Judge Upholds Florida's Refusal of Massachusetts Law*, S.F. CHRON., Jan. 20, 2005, at A14.

223. *See* Strasser, *supra* note 117, at 333. It is unclear whether only the law of the domiciliary state of the couple at the time of marriage should apply. A same-sex couple may get married in one state and live there for twenty years. If they move somewhere else, to retire, for example, the new state may refuse to recognize their marriage. A broader reading of the statute may mean that a state, even if it is not where the same-sex couple has established their domicile, can refuse to recognize the marriage. If the same-sex couple were involved in a car accident where same-sex marriages are not recognized, one partner may not be permitted to authorize any necessary medical procedures for the other. *See id.* at 333.

224. *See id.* at 336.

as a marriage under the laws of some other State.”²²⁵ Such rights or claims could be judgments relating to a support award or property settlement granted in a dissolution of the same-sex marriage or relationship.²²⁶ It is possible that if DOMA is broadly interpreted, it would authorize other states to refuse to enforce judgments²²⁷ issued in the marital domicile relating to spousal support, child custody,²²⁸ or property division.²²⁹

There is also the danger that the courts will improperly apply a broad interpretation of DOMA to adoption decrees. While not specifically addressing adoption, DOMA allows states to refuse recognition of “a right or claim” arising from a same-sex relationship.²³⁰ Generally, adoption is not a right that emanates specifically from a same-sex marriage.²³¹ However, it is possible that DOMA may be applicable to domestic partnerships because, to a limited extent, they are “based on a relationship ‘treated as a marriage.’”²³²

If domestic partnerships are interpreted as being based on marriage, it is possible that second-parent adoptions arising from domestic partner rights may be invalidated by DOMA.²³³ Therefore, states that currently afford domestic partners the right of stepparent adoptions²³⁴ may have to

225. See *id.* at 338; Cox, *supra* note 188, at 772-75. Professor Borchers states that “I, for one, would not construe DOMA to affect the obligation of courts to recognize money judgments simply because the existence of a same-sex marriage played into the underlying theory that led to the judgment.” See *id.* at 774-75.

226. See Strasser, *supra* note 117, at 337.

227. It is possible that even if DOMA is held to be constitutional, “courts will probably be reluctant to deny enforcement of such judgments, no matter how negative the sentiments about same-sex marriages might be in their states.” See Cox, *supra* note 188, at 775. If a judgment was taken to another state for enforcement, “[t]he historical practice gives a strong presumption that such a judgment would be entitled to full faith and credit and that the second state could not refuse to recognize it. There is significant language in *Williams I* and *Williams II* to support that conclusion.” See Wardle, *supra* note 87, at 230.

228. Recognition of interstate child custody support orders are governed by federal statute. See 28 U.S.C. § 1738B (2000).

229. See Strasser, *supra* note 117, at 337.

230. See 28 U.S.C. § 1738C (2000).

231. See, e.g., CAL. FAM. CODE § 9000 (Deering 2004 and Supp. 2005).

232. See Ralph U. Whitten, *Exporting and Importing Domestic Partnerships: Some Conflict-of-Laws Questions and Concerns*, 2001 BYU L. REV. 1235, 1246 (2001).

233. See Cox, *supra* note 188, at 775-76.

234. See, e.g., CAL. FAM. CODE § 9000.

change their laws and find another way to validate same-sex adoptions.

Future rulings by federal courts that DOMA applies to domestic partnerships or civil unions would probably strengthen Oklahoma's position in *Finstuen*. Such rulings may signal that the courts are straying from the historical purpose of the Full Faith and Credit Clause and have compromised the Clause's principles in the face of social pressures. This may allow Oklahoma to mount a stronger defense in *Finstuen*.

Based on all of the above reasons, section 7502-1.4 should be struck down as unconstitutional. The case law surrounding the Full Faith and Credit Clause has never created a public policy exception to the Clause.²³⁵ Creating an exception now could lead to broader exceptions that may hinder interstate travel and destroy the stability of many families.

V. PROPOSAL

The district court in *Finstuen* should rule that the Oklahoma statute denying full faith and credit to valid adoption decrees issued to same-sex couples in other states²³⁶ is unconstitutional. Historical constitutional principles, which have been illustrated in recent case law, show that the Full Faith and Credit Clause must be followed. Allowing section 7502-1.4 to stand would run contrary to the "best interests of the child."²³⁷ It would be a tragedy to break up already stable families, where emotional bonds between parent and child have already been established.

First, constitutional principles and case law show that the Full Faith and Credit Clause continues to be a vital and important part of our nation's identity.²³⁸ Without the Clause, each state could emerge as its own sovereign entity and refuse to acknowledge the validity of other states' judgments.²³⁹ A federal court ruling upholding the Oklahoma statute as constitutional would be contrary to the important principles established in cases such as *Fauntleroy*,²⁴⁰ *Williams*

235. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998).

236. OKLA. STAT. ANN. tit. 10, § 7502-1.4 (West. Supp. 2004).

237. See *supra* text accompanying notes 37-40.

238. See, e.g., *Baker*, 522 U.S. at 232-35.

239. See Cox, *supra* note 188, at 776-78.

240. *Fauntleroy v. Lum*, 210 U.S. 230 (1908).

I,²⁴¹ and, more recently, *Baker*.²⁴² Furthermore, if the Oklahoma statute is upheld as constitutional by the courts, it may signal to legislatures that courts will implicitly approve anti-gay legislation.

The Oklahoma court system should continue to adhere to the rich tradition of compliance with the Full Faith and Credit Clause of the Constitution.²⁴³ Upholding section 7502-1.4 would weaken the long-standing principles articulated by the Framers in the Full Faith and Credit Clause. Furthermore, it would carve out a public policy exception for state court judgments.²⁴⁴ This exception would interfere with interstate travel.²⁴⁵ If section 7502-1.4 is upheld, other states may pass similar laws. This would result in a patchwork nation where gay and lesbian families would have to avoid certain states because of the risk of losing the legal rights they have with their children.

Section 7502-1.4 also fails to promote the "best interests of the child."²⁴⁶ It threatens to break up stable families who have already been legally designated a family by another state. These other states, such as California and Vermont, have decided that it is within their public policy to encourage the stability of such families.²⁴⁷ Allowing section 7502-1.4 to stand would upset the balance of legal rights enjoyed by these families.

Although Oklahoma will most likely not take children away from their families upon crossing state lines, the State will deny children their previously-held rights. Should the family be involved in a car accident where the biological parent dies, the question of who should have custody of the children would arise. If Oklahoma continues to adhere to its current position on second-parent adoptions, it is possible that

241. *Williams v. North Carolina* (*Williams I*), 317 U.S. 287 (1942).

242. *Baker*, 522 U.S. at 222.

243. Failure to adhere strictly to the Full Faith and Credit Clause may pave the way for courts to refuse to acknowledge other types of judgments because of public policy exceptions, though such rulings may contradict precedent. See, e.g., *id.*

244. See, e.g., *id.* at 232.

245. It is also possible that interstate commerce would be affected. Companies would no longer know whether their judgment in one state would be enforced in another. Interstate commerce could be much more difficult when sister states refuse to recognize each other's valid judgments.

246. See text accompanying *supra* notes 37-40.

247. See discussion *supra* Part IV.C.

these children could be taken away from the co-parent and custody given to the child's biological relatives.²⁴⁸ The serious psychological and emotional impact of having not just one, but two parents taken from the child in a short period of time may have a devastating impact on the child's psychological well-being.²⁴⁹ The Oklahoma court, in deciding this issue, must also consider the impact of its decision on the children of these families. The children would be discriminated against simply because they have parents who are of the same sex.

In the event that the district court and subsequent appellate courts refuse to declare the Oklahoma statute unconstitutional, Congress should act by invoking its powers under the Full Faith and Credit Clause. Congress has previously exercised its power under the Clause in enacting the Parental Kidnapping Prevention Act,²⁵⁰ which governs the recognition and enforcement of state child custody determinations among the states.²⁵¹ There would be no reason why Congress could not pass a similar statute governing the recognition and enforcement of adoption orders. In doing so, Congress would signal to the nation the importance of family stability in American society.

Section 7502-1.4 should be struck down as unconstitutional and contrary to public policy of the United States. Otherwise, families could be broken apart, leaving children with only one or no legal parent. The statute is contrary to Oklahoma's public policy on adoption, which is to promote the "best interests of the child."²⁵² If section 7502-1.4 is not struck down by the courts, it should be repealed by the Oklahoma legislature. If this practice of denying recognition of same-sex adoptions issued by other states continues, Congress should become involved by exercising its power under the Full Faith and Credit Clause to require recognition of valid adoption decrees across state lines.

248. See Taylor, *supra* note 2.

249. See Committee on Psychosocial Aspect of Child and Family Health, *Co-parent or Second-Parent Adoption by Same-Sex Partners*, 109 AM. ACAD. OF PEDIATRICS 339 (Feb. 2002), available at <http://pediatrics.aappublications.org/cgi/content/full/109/2/339>.

250. 28 U.S.C. § 1738A (2000).

251. See MCDUGAL, *supra* note 26, § 65, at 265.

252. See OKLA. STAT. ANN. tit. 10, § 7501-1.2 (West 1998).

VI. CONCLUSION

Section 7502-1.4 is the first of its kind in the United States and the rulings that emanate from it will have important doctrinal effects. The Oklahoma court's ruling will signal to the country whether the court system will adhere to the constitutional doctrine of Full Faith and Credit. Furthermore, among the highly polarizing issues of gay rights and gay marriage, it will signal whether the country is able to put aside prejudices and fight for the rights of the children involved. These children should not be victims of the anti-gay sentiment that currently pervades the country. They should be afforded the same protection and be given the same rights as children who are in traditional heterosexual families, including the right to two legal parents in all fifty states.

The Full Faith and Credit Clause was intended to bring together the various states as one connected whole. Even in the twentieth century, the Supreme Court has refused to acknowledge a public policy exception for valid state judgments.²⁵³ The Court has even held that no-fault divorce decrees should be given full faith and credit, regardless of the forum state's policy on no-fault divorces.²⁵⁴ The same should be true for adoption decrees that have been issued with both proper subject matter and personal jurisdiction. This would encourage stable families, families that would not be a burden on the states, and families that would raise children that will contribute to American society.

253. See *Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998).

254. *Williams v. North Carolina (Williams I)*, 317 U.S. 287 (1942).